

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE: YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION)	3:09-md-02100-DRH-PMF
)	MDL No. 2100
)	

This Document Relates to:

Courtney Boggus v. No. 3:11-cv-12149-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Laura M. Brown and Matthew Brown v. No. 3:11-cv-10805-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Katie Chor, et al. v. No. 3:11-cv-12891-DRH-PMF
*Bayer HealthCare Pharmaceuticals, Inc., et al.*¹

Kelly Engle v. Bayer Corp., et al. No. 3:11-cv-11024-DRH-PMF

Melanie Gardner-Boyd v. Bayer Corp., et al. No. 3:10-cv-13581-DRH-PMF

Jewel Goodyear v. Bayer Corp., et al. No. 3:11-cv-11457-DRH-PMF

Stacy L. Gordon and Braden W. Gordon v. No. 3:11-cv-11835-DRH-PMF
Bayer Corp., et al.

Julie Kinsolving v. No. 3:11-cv-11550-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

¹ This order applies to plaintiffs (1) Sarah Bennett, (2) Latosha Black, (3) Ramieka Bowen, (4) Julie Bradley, (5) Mona Lisa Buchanan, (6) Elisa Cady, (7) Amy Crider, (8) Jessica Cuellar, (9) Tara Cyphert, (10) Manuela Espinosa, (11) Catina Glaspie, (12) Kellie Griener, (13) Donshae Harris, (14) Loralee Ivkovic, (15) Latia Jennings, (16) Jennifer Kendall, (17) Caitlyn Kidle, (18) Mary Marsalis, (19) Kathryn McAtee, (20) Jennifer Mills, (21) Sheri Nilsson, (22) Traci Nurse, (23) Sarah Parney, (24) Unique Pirtle, (25) Michelle Porche, (26) Lucille Price, (27) Sandra Price, (28) Shannon Rachal, (29) Tshangie Smith, (30) Lacey Stone, and (31) Allison Wardingley.

Kristin Lamb, et al. v. No. 3:11-cv-12893-DRH-PMF
*Bayer HealthCare Pharmaceuticals, Inc., et al.*²

Jessica Pinales and Jesus Pinales v. No. 3:11-cv-11734-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Bernadette Polux v. Bayer Corp., et al. No. 3:11-cv-11848-DRH-PMF

Lashey Richardson v. No. 3:11-cv-10384-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Holly Sanchez v. No. 3:11-cv-11124-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

ORDER GRANTING DISMISSAL WITHOUT PREJUDICE

This matter is before the Court on the Bayer defendants motion, pursuant to Case Management Order 12 (“CMO 12”),³ for an order dismissing plaintiffs’ claims in the above-captioned matters without prejudice for failure to comply with their Plaintiff Fact Sheet (“PFS”) obligations.⁴

Under Section C of CMO 12, each plaintiff is required to serve defendants with a completed PFS, including a signed declaration, executed record release authorizations, and copies of all documents subject to the requests for production contained in the PFS which are in the possession of plaintiff. Section B of CMO 12 further provides that a completed PFS is due “45 days from the date of service

² This order applies to plaintiffs (1) Kendra Cater, (2) Katherine Houck, (3) Rachel Price, (4) Mariella Villegas, and (5) Nikki Watterson.

³ The Parties negotiated and agreed to CMO 12, which expressly provides that the discovery required of plaintiffs is not objectionable. CMO 12 § A(2).

⁴ The Bayer defendants’ motion also sought dismissal of *Shelly Kincade v. Bayer Schering Pharma AG, et al.* No. 3:10-cv-13020-DRH-PMF. However, Bayer has since withdrawn its motion to dismiss the claims in this case (10-13020 Doc. 5).

of the first answer to her Complaint or the docketing of her case in this MDL, or 45 days from the date of this Order, whichever is later.”

Plaintiffs in the above-captioned matters were to have served completed PFSs on or before November 5, 2011 (See 11-cv-12149 Doc. 6-1).⁵ Per Section E of CMO 12, Notice of Overdue Discovery was sent on December 5, 2011 (See 11-cv-12149 Doc. 6-2). Plaintiffs’ completed PFSs are thus nearly four months overdue.⁶

Under Section E of CMO 12, **plaintiffs were given 14 days from the date of Bayer’s motion**, in this case 14 days from January 31, 2012, to file a response either certifying that they served upon defendants and defendants received a completed PFS, and attaching appropriate documentation of receipt or an opposition to defendant’s motion.⁷

⁵ Identical motions were filed in each of the above captioned cases. For ease of reference the Court refers to the motion and exhibits filed in *Courtney Boggus v. Bayer HealthCare Pharmaceuticals, Inc., et al.* No. 3:11-cv-12149-DRH-PMF.

⁶ The Bayer defendants state that they received medical records from plaintiff Bernadette Polux on January 23, 2012, but have yet to receive a completed PFS from Ms. Polux (See 11-cv-12149 Doc. 6).

⁷ Responses to Bayer’s motion to dismiss were due 14 days from January 31, 2012 regardless of any response date automatically generated by CM/ECF. The Court has previously noted in orders in this MDL and during a status conference in this MDL that **when deadlines provided by CM/ECF conflict with orders of this Court, the Court ordered deadline will always control**. See **United States District Court for the Southern District of Illinois, Electronic Filing Rules, Rule 3** (The “filer is responsible for calculating the response time under the federal and/or local rules. The date generated by CM/ECF is a guideline only, and, if the Court has ordered the response to be filed on a date certain, the Court’s order governs the response deadline.”). The deadlines provided by CM/ECF are generated automatically based on the generic responsive pleading

To date, none of the plaintiffs in the above captioned member actions has filed a response. Because the plaintiffs have failed to respond to Bayer's allegations, the Court finds that these plaintiffs have failed to comply with their PFS obligations under CMO 12. Accordingly, the Court hereby **ORDERS** as follows:

- With regard to member action *Katie Chor, et al. v. Bayer HealthCare Pharmaceuticals, Inc., et al.* No. 3:11-cv-12891-DRH-PMF, the following plaintiffs' claims are dismissed without prejudice for failure to comply with the requirements of CMO 12:

(1) Sarah Bennett, (2) Latosha Black, (3) Ramieka Bowen, (4) Julie Bradley, (5) Mona Lisa Buchanan, (6) Elisa Cady, (7) Amy Crider, (8) Jessica Cuellar, (9) Tara Cyphert, (10) Manuela Espinosa, (11) Catina Glaspie, (12) Kellie Griener, (13) Donshae Harris, (14) Loralee Ivkovic, (15) Latia Jennings, (16) Jennifer Kendall, (17) Caitlyn Kidle, (18) Mary Marsalis, (19) Kathryn McAtee, (20) Jennifer Mills, (21) Sheri Nilsson, (22) Traci Nurse, (23) Sarah Parney, (24) Unique Pirtle, (25) Michelle Porche, (26) Lucille Price, (27) Sandra Price, (28) Shannon Rachal, (29) Tshangie Smith, (30) Lacey Stone, and (31) Allison Wardingley.

- With regard to member action *Kristin Lamb, et al. v. Bayer HealthCare Pharmaceuticals, Inc., et al.* No. 3:11-cv-12893-DRH-PMF, the following plaintiffs' claims are dismissed without prejudice for failure to comply with the requirements of CMO 12:

(1) Kendra Cater, (2) Katherine Houck, (3) Rachel Price, (4) Mariella Villegas, and (5) Nikki Watterson.

times allowed under the rules and do not consider special circumstances (such as court orders specific to a particular case or issue).

- The following member actions are dismissed without prejudice for failure to comply with the requirements of CMO 12:

Courtney Boggus v. Bayer HealthCare Pharmaceuticals, Inc., et al.
No. 3:11-cv-12149-DRH-PMF

Laura M. Brown and Matthew Brown v. Bayer HealthCare Pharmaceuticals, Inc., et al. No. 3:11-cv-10805-DRH-PMF

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Bernadette Polux v. Bayer Corp., et al. No. 3:11-cv-11848-DRH-PMF

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No. 3:11-cv-11124-DRH-PMF

Further, the Court reminds plaintiffs that, pursuant to CMO 12 Section E, **unless plaintiffs serve defendants with a COMPLETED PFS or move to vacate**

the dismissal without prejudice within 60 days after entry of this Order, the Order will be converted to a Dismissal With Prejudice upon defendants' motion.

SO ORDERED

 David R. Herndon
2012.02.28
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Chief Judge
United States District Court

Date: February 28, 2012